

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

NANCY UMFLEET, on behalf of herself)
and all others situated,)
)
Plaintiff,)
)
v.) No. 4:18 CV 858 DDN
)
FIESER NURSING CENTER, LLC,)
)
Defendant.)

**FINAL JUDGMENT ORDER
APPROVING CLASS ACTION SETTLEMENT**

On January 28, 2019, this collective and class action came before the Court for a hearing on the joint motion of the parties for final approval of the settlement set forth in the Joint Stipulation of Settlement and Release ("Settlement Agreement") (Doc. 17, Ex. 1).

The action was commenced in the Circuit Court of St. Louis County on April 17, 2018, by plaintiff Nancy Umfleet, on behalf of herself and all others similarly situated, against defendant Fieser Nursing Center, LLC., for violation of the overtime wage payment requirements of the federal Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* On June 5, 2018, the action was removed to this Court based upon the federal question subject matter jurisdiction granted by 28 U.S.C. § 1331.

On October 22, 2018, the Court gave preliminary approval of the parties' Settlement Agreement (Doc. 17-1). At the January 28, 2019 hearing, the Court received undisputed proffers of information by counsel for the plaintiff and the Class and counsel for the defendant.

The Court has considered the Settlement Agreement, all papers filed, the proceedings in this action, and the statements of counsel regarding the proposed settlement.

Upon the record of this action, making the following findings and conclusions,

1. The Court has subject matter jurisdiction over this collective and class action pursuant to the federal Fair Labor Standards Act, 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

2. All parties have consented to the exercise of plenary authority by the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).

3. The Class of claimants represented by plaintiff Nancy Umfleet is defined as follows:

The “Settlement Class” or the “Class” consists of all current or former Nurses who work or worked at Fieser Nursing Center, LLC’s facility located in Fenton, Missouri, at any time between April 17, 2016, and September, 21, 2018. These individuals have been identified in the class lists provided by Defendant Fieser Nursing Center, LLC to Class Counsel.

4. The Settlement Class meets the requirements of Federal Rule of Civil Procedure 23 for settlement purposes. Specifically, the Court finds that:

(a) The Class is so numerous that joinder is impracticable.

(b) There are questions of law and fact common to the members of the Class, which common questions predominate over any questions that affect only individual Class members.

(c) Plaintiff's claims are typical of the claims of the Class Members.

(d) Plaintiff and Class Counsel have fairly and adequately represented the interests of the class members.

(e) A class action is superior to other alternative methods of adjudicating the issues in dispute between the parties.

5. On October 22, 2018, this Court preliminarily approved the Class Action Settlement reached between plaintiff and class representative Nancy Umfleet and defendant Fieser Nursing Center, LLC. The Court also approved the forms of notice and the procedure for directing notice to the class members.

6. Distribution of the Notice of Class Action Settlement was made as provided for in the Preliminary Approval Order. This method of distribution was the best notice

practicable under the circumstances to all persons within the definition of the Class, and fully met the requirements of Missouri law and Due Process provision of the United States Constitution.

7. The Notice of Proposed Settlement was mailed to 23 potential class members, apprising them of their rights and the procedures for opting out of this litigation, objecting to the settlement, and objecting to class counsel's application for attorney fees and expenses.

8. The deadline for the class members to submit an objection was January 7, 2019. As of the January 28, 2019 hearing no objection was submitted to counsel or filed with the Court, and no class member opted out of the class. Counsel has received a total of 9 valid and timely claim forms.

9. The Settlement Agreement provides for a total settlement fund of \$83,000.00. From this fund plaintiff Nancy Umfleet has been paid \$1,800.00 as consideration for her service as named plaintiff and class representative, and as consideration for her general release.

10. The Court, for purposes of this Final Order Approving Class Action Settlement, adopts all provisions and defined terms as set forth in the Settlement Agreement.

11. The Court approves the settlement of this action, according to the terms set forth in the Settlement Agreement, the release and other terms, as fair, just, reasonable and adequate as to all the parties. The parties are directed to perform and accomplish the terms of the Settlement Agreement.

12. The Court has received Class Counsel's request for attorney fees and finds that Class Counsel's request is fair and reasonable.

Whereupon,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Joint Motion for Final Approval of Class and Collective Action Settlement and Attorneys' Fees (Doc. 21) is sustained, in that:

a. Upon the conclusion of this litigation, the settlement administrator shall distribute to Class Counsel \$29,050.00 (35% of the settlement fund).

b. Counsel for the parties shall report to the Court on or about 200 days following issuance of payments of settlement fund proceeds to the class members the following information: the number and total amount of checks that were issued, the number of those checks that remain uncashed, the total amount of the settlement fund that has been distributed, and the total amount of the settlement fund that has not been distributed. Counsel for both parties shall recommend to the Court how and where the undistributed funds should be distributed.

c. Not later than 7 days after the filing of the report described in paragraph b, Class counsel and defendant's counsel shall file a joint motion for dismissal of this action with prejudice. Said motion must advise the Court of the number of class member claims paid, the total amount of claim funds paid, the amount of the settlement fund unpaid, and the disposition of the unpaid amount.

UNITED STATES MAGISTRATE JUDGE

Signed on January 29, 2019.